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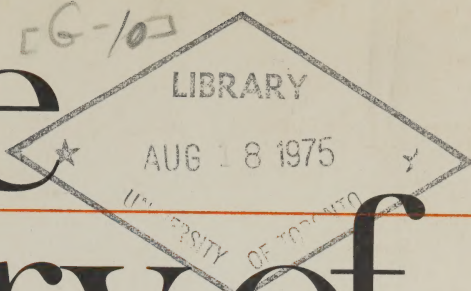
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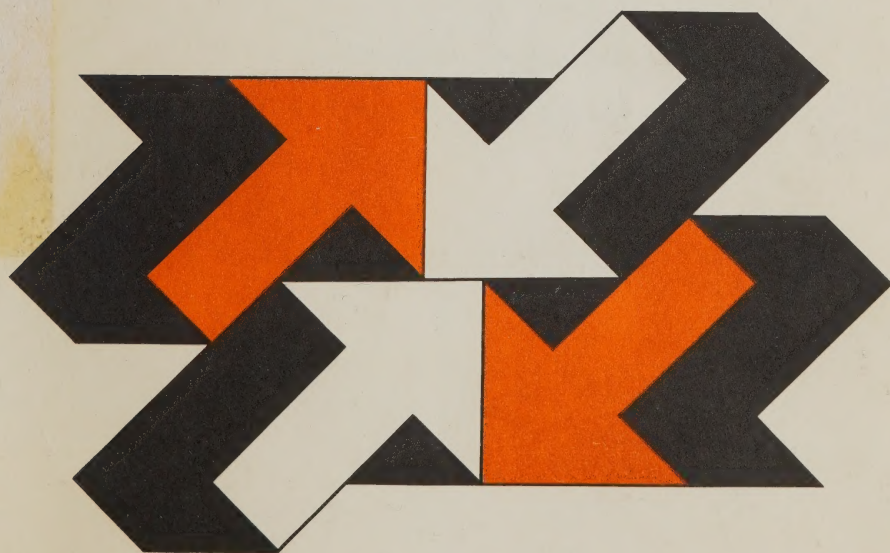
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the delivery of legal aid services in canada





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THE DELIVERY OF LEGAL AID
SERVICES IN CANADA

PART I:
Provincial-Territorial
Legal Aid Programmes

DEPARTMENT OF JUSTICE
Ottawa Canada

INTRODUCTION

This report attempts to give a brief summary of the presently established provincial and territorial legal aid plans in Canada. The outlines are based on information received from the provinces and territories by the Federal Department of Justice as of September, 1974.

The reports, as published, have for most parts been verified by officers of the provincial-territorial plans concerned. Because of rapid changes in this area, it is impossible to guarantee the complete accuracy of these summaries.

It is readily apparent that the descriptions are factual summaries only. A more comprehensive description and analysis will hopefully be prepared in the not too distant future as the developing provincial and territorial programs become more firmly established and begin to produce the necessary statistical and financial information.

This report does not deal with the large number of independent and student legal aid services operating in the country. In many provinces, such organizations provide important supplements to the existing provincial programs. A report dealing with these independent organizations/projects will be published in the near future.

Any correspondence arising from this report should be directed to:

Department of Justice,
Programs and Law Information
Development Section (Legal Aid),
Ottawa, Ontario.
K1A 0H8

Report prepared for the
Federal Department of
Justice by:

Ian B. Cowie,
Special Adviser
on Legal Aid.

December 1974

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BRITISH COLUMBIA
PROVINCIAL LEGAL AID PLAN

History:

Until 1952 there was no official legal aid plan operating in British Columbia although voluntary legal aid services were provided on an unorganized basis by some members of the bar.

In 1952 a province-wide legal aid plan was introduced. The plan was operated by the Law Society with the co-operation of local Bar associations. The Bar associations, through their committees, established procedures for holding clinics and referring cases, and recruiting lawyers to start the clinics and handle the cases. All legal services were provided on a voluntary basis, free of charge to the applicant.

Coverage of the plan included criminal and civil matters although there were a number of specified exclusions and restrictions in the latter area. Financial eligibility was not tied to a dollars and cents standard but each case was dealt with on its merits.

On February 26, 1970 the Legal Aid Society of British Columbia was incorporated under the Societies Act with the objective of administering throughout the province a program of legal aid for persons unable to afford legal services.

The fee-for-service legal aid program in criminal cases was introduced on February 26, 1970. On December 28, 1972 the Province of British Columbia and the Federal Government of Canada entered into a cost-sharing agreement for the provision of legal aid in criminal matters in the province.

It should be noted that the existing plan as described below is currently being analyzed for the newly created Provincial Justice Development Commission to determine future direction and expansion.

Plan, Structure and Operation:

Informal agreements between the Law Society of British Columbia and the provincial government govern the legal aid plan in the province. The only applicable legislation is an amendment to the Rules of Courts Practice Act which provides that, where legal aid has been granted in a civil matter, costs are recoverable and payable to the legal

aid society.

The Legal Aid Society of British Columbia is incorporated under the "Societies Act" and has its own Board of Directors. The majority of Directors are appointed by the Treasurer of the Law Society of British Columbia. The Legal Aid Society of British Columbia makes annual requests to the Provincial Government for funding to carry out the services which it provides. Funds are also received from the Law Foundation which has been set up to receive and administer the interest from lawyers' Trust accounts.

The Provincial Plan has combined a referral or "judicare" system with a neighbourhood law office system relying upon the private Bar to take the majority of criminal and family law cases and having full time Regional offices both administer the referral system and provide legal assistance in those areas of the law not covered by existing tariffs.

The plan is administered by the Legal Aid Society of British Columbia. At the present time, six full-time offices are in operation in Vancouver, Prince George, Victoria, Campbell River, Kamloops, and New Westminster. Nine more regional offices are scheduled to open between now and April 1, 1975. The Vancouver office also acts as the central office for the Province.

The full-time offices, other than Vancouver, have two salaried lawyers on staff, and the Vancouver office has five lawyers, including the Director and a Research Director. Staff lawyers tend to concentrate more on civil matters and are encouraged to use the referral system in criminal and family law matters, where tariffs are in force.

In addition to these full-time offices, there are twenty-nine regional offices run by volunteer area co-ordinators, who are members of the private Bar, and who primarily process criminal legal aid applications.

There is a duty counsel system in effect, and in Vancouver this service is provided by the private Bar. Volunteers are solicited from the Bar and each lawyer works as duty counsel for a month on a rotational basis. Duty counsel are paid a daily fee for their services. Outside Vancouver, duty counsel are the staff lawyers in the full-time offices, and members of the private Bar serving on a voluntary rotational basis in those areas where there are no full-time legal aid offices.

Coverage:

(a) Criminal Law:

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

(b) Civil Matters:

Civil legal aid coverage has been available in British Columbia for four years in the full-time and the regional offices depending on the number of lawyers in the area available to provide assistance. Exclusions from coverage include small claims court matters, breach of promise actions, proceedings under the Elections Act, defamation actions and private prosecutions. Matters involving probate and letters of administration are also excluded except where there is undue hardship involved. For instance, estates will be handled if the estate would be wiped out by paying legal fees. Bankruptcy matters will be handled after receiving orders are given and on applications for discharge. In the area of family law, legal aid will provide lawyers for respondents in family court actions, legal assistance for applicants usually having been provided by the Provincial Government. It should be noted that where no regional office has been established to serve a defined area; civil legal aid services if provided at all, will be rendered by members of the bar on a voluntary basis as the established civil tariff only extends to cover family matters.

Eligibility:

There are no defined economic guidelines for eligibility for legal aid in British Columbia.

There is no residency requirement for applicants for legal aid in criminal matters in British Columbia in accordance with the terms of the federal-provincial cost-sharing agreement. With regard to civil matters, if the matter is one in which British Columbia courts have

jurisdiction and if the applicant is eligible for legal aid in his home province, then he would also be eligible for legal aid in British Columbia.

Tariffs:

A tariff of fees paid to members of the private Bar for services rendered under the legal aid plan in criminal matters was approved by the British Columbia Government and increased on April 1, 1974. In the civil area a tariff for family law matters only was established on April 1, 1973. Otherwise, there is no tariff for civil matters; disbursements only are paid.

Lawyers' records and accounts are forwarded to the central legal aid office in Vancouver for taxing and statistical purposes, and the claim is then sent to the Attorney General's office in Victoria for payment.

Experimental Projects and Supplementary Services:

In the summer of 1974, a group of law students will be running clinics in the province's penitentiaries and medium security institutions and eventually, it is hoped, in the mental institutions of the province. The purpose of the project is to discover what the needs of the inmates of these establishments are and how legal services can best be provided to those individuals. The project is being funded by the provincial government and administered by the Legal Aid Society of British Columbia.

Financial:

In the fiscal year ending March 31, 1974, the following expenditures were made on Legal Aid in the province (figures subject to audit):

Criminal	\$1,532,303.34
Civil	166,810.43
Administrative	172,893.12
Total	<u>\$1,872,006.89</u>

For the major part of 1973, no tariff was available for any civil matters including family law matters, and disbursements only were paid to Solicitors. Commencing April 1, 1973, a tariff came into effect for family law referrals.

The expected cost of legal aid in the province for the fiscal year 1974-75 will be \$2½ million.

Contributions are recovered from legal aid applicants on a discretionary basis only and amounted to \$4,700 in the 1973 calendar year.

Independent and Student Legal Aid Services:

Independent and Student Legal Aid Services will be described in more detail in a separate report to be published dealing exclusively with such services.

The organizations that will be described in the British Columbia context include:

The Vancouver Community Legal Assistance Society - an independent organization which operates through several neighbourhood offices in Vancouver in conjunction with the University of British Columbia Student Legal Aid Program and offers direct services and assistance to community groups. It handles test cases, class actions and tends to concentrate on broad legal issues.

It has three full-time staff lawyers and is presently operating a training program for three para-legal assistants.

The Native Courtworkers and Counselling Association also operates in the province, and its objective is to put native workers into the courtroom in all areas of the province, especially the remote underserved areas, and to inform accused persons of their rights and refer them to legal aid.

The University of British Columbia Law School operates a number of storefront legal clinics in the evenings in Vancouver in conjunction with Vancouver Community Legal Assistance Society.

The lawyer referral service operated by the local branch of the Canadian Bar Association is also available in Vancouver, Victoria and Prince George. The Vancouver office also provides this service on a province-wide basis. This service provides one-half hour of legal advice to the applicant for a flat fee of \$5.

A do-it-yourself divorce scheme is operating in Vancouver and is run by law students in conjunction with the local legal aid office. Cases handled are those involving matrimonial breakdown on the basis of three or five year separation. Once the cases are ready for the court hearing, a lawyer from the legal aid office represents the applicant.

The Vancouver People's Law School conducts legal education courses for the public in a wide number of areas

of the law in various parts of Vancouver. Courses are provided free of charge by volunteer lawyers and printed materials are made available to those enrolled in the courses.

The British Columbia Civil Liberties Association
is operating a fieldworker - para-legal program.

A number of multi-service community organizations now have well established legal clinics staffed by para-legal workers and voluntary lawyers e.g. Matsqui, Sumas, Abbotsford Community Services.

ALBERTA
PROVINCIAL LEGAL AID PLAN

History:

Prior to 1970, there was no organized legal aid plan in Alberta. In criminal matters the Attorney General of Alberta in co-operation with the members of the Bar permitted Judges to appoint counsel for people charged with indictable offences so that they would be represented by counsel at their trials. In serious criminal matters counsel were appointed by the Deputy Attorney General or his agent prior to the preliminary hearing. The Attorney General always recognized the responsibility for payment of counsel so appointed and they were paid on the same basis as agents of the Attorney General were paid in rural areas where they had part time employment.

In civil matters a formal scheme was set up under the "needy litigant" rules contained in the Consolidated Rules of the Supreme Court of Alberta. Under this procedure all Court House charges and Court Reporters' fees were absorbed by the Department of the Attorney General.

The lawyer who received the appointment performed his services gratuitously unless a recovery was made, and in that event he received such remuneration as was specifically authorized by the local Needy Litigant Committee; otherwise the only payment lawyers ever received was for party and party costs in the event that appointed counsel was able to collect them.

In 1963 approval was given by the Attorney General and the Law Society to operate a pilot project in Edmonton in cooperation with the Edmonton Bar Association to provide extended criminal legal aid services, particularly at the Magistrates Courts level. After some adjustments this was extended to the rest of the Province.

In 1967 another pilot project was started in Edmonton to provide comprehensive legal aid coverage in both civil and criminal matters. In civil matters qualified applicants were able to see a lawyer in his office for a short time for a \$5.00 "deterrent" fee.

The legal aid plan, as it then was, had no legislative base and was operated under an informal agreement between the Provincial Government and the Law Society. Government participation consisted of providing the funds necessary to operate the scheme and participating on the Legal Aid Committee.

Eligibility was not decided on the basis of a means or needs test. Applicants had no choice of counsel. Choice of counsel was the prerogative of the Legal Aid Committee. However, if a disagreement arose between an applicant and his lawyer, the applicant could request the services of another lawyer. The Committee also kept a list of experienced counsel to call upon in cases requiring particular expertise or in very serious or complicated matters.

On July 1, 1970, an agreement was signed between the Law Society of Alberta and the provincial government whereby the Law Society was empowered to establish, maintain and operate the legal aid plan to provide necessary legal services to qualified applicants.

The Legal Aid Society of Alberta was incorporated on May 24, 1973 under the Societies Act of Alberta and that body is now responsible for the administration of the legal aid plan.

On January 31, 1973 the Province of Alberta and the Federal Government signed a cost-sharing agreement for the provision of legal aid in criminal matters.

Plan, Structure and Operation:

There is no specific legislation regulating legal aid in the province. The plan is operated by the Legal Aid Society of Alberta. A joint Legal Aid Committee, whose members are appointed by the Law Society and the provincial government, is responsible for policy matters under the plan. The Committee also hears appeals from refusals to grant legal aid and decides whether individual cases should be appealed to the Supreme Court of Canada. The membership of this Committee consists of twelve members of the Law Society, two lay representatives, and a student from Student Legal Services in Edmonton.

The provincial director is responsible for the administration of the plan in the province. In addition to the joint committee, there are eleven regional Legal Aid Committees throughout the province in Edmonton, Calgary, Grande Prairie, Drumheller-Hanna, Lethbridge, Red Deer, Fort McLeod, Medicine Hat, Peace River, Vegreville and Wetaskiwin.

The regional committees administer legal aid in their respective areas and are completely autonomous in the granting or refusing of legal aid certificates except where Supreme Court of Canada appeals are involved in which

case they may recommend for or against an appeal but can not give final approval. Final approval can only be given by the joint committee.

The legal aid service has permanent offices in Edmonton and Calgary. The director of the legal aid program and the assistant director work out of the Edmonton office which has a total staff of twelve and the deputy director works out of the Calgary office which has a total staff of six. There are no permanent offices for the regional Legal Aid Committees. Legal aid applications are taken by the Court Clerk's office and the Sheriff's office, and the regional committee's meet regularly to process the applications. The chairman of each regional committee is a lawyer and the public is represented on every regional Legal Aid Committee.

Once an applicant for legal aid is found to be financially and legally eligible, for services the Committee will appoint counsel for him from the list of local lawyers. Cases are assigned on a rotational basis. Applicants have no choice of counsel except in situations covered by Section 5(2) of the federal-provincial agreement on criminal legal aid. That section provides that where an applicant for legal aid is eligible financially, and has been charged with an offence, the penalty for which is either life imprisonment or capital punishment, he is entitled to retain and instruct any member of the Bar of the province who is prepared to act for him as a recipient of legal aid.

Thus, the plan utilizes a rotational-referral delivery system. In addition to the Director, Deputy Director, and Assistant Director, there are two staff lawyers in the Edmonton and Calgary offices but they are involved in purely administrative functions. The Society does not employ full-time salaried lawyers for the delivery of legal services as such.

In Edmonton and Calgary, two persons designated as community legal aid interviewers work out of the legal aid offices. In February 1974, the first full-time community legal aid interviewer was employed in Edmonton with the responsibility of interviewing applicants for legal aid who were in custody in the municipal jail, juvenile detention centres and other places of incarceration. The interviewer also appears by arrangement in the Alberta mental hospitals at Oliver and Ponoka and other related facilities. The interviewers, after attending at the jails and lock-ups, then sit in criminal court for the duration of the sittings accepting applications and making referrals. In Calgary, the community legal aid interviewer was hired on April 1, 1974 and works out of the new remand centre in that city.

Coverage:

(a) Criminal Law:

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

(b) Civil Matters:

Coverage is prima facie comprehensive but internal guidelines in fact result in exclusions. For instance, divorce is not available as a matter of right and unless there is an urgent physical, economic or emotional need, the client will be referred to a program operated by the Edmonton student legal services society. However, the plan handled 1,650 divorces during 1973-74 and paid out for over 1,100 of them.

Estate and probate and other matters are considered depending on the circumstances. Less common actions such as libel and slander cases, restitution of conjugal rights or group actions are referred to the appropriate Regional Legal Aid Committee for decision.

Eligibility:

There are no established financial guidelines for legal aid applicants in Alberta. The primary test is that each applicant, in order to be financially eligible, should not be required to dispose of modest necessary assets or to incur indebtedness resulting in financial hardship. An applicant must prove to the satisfaction of the Alberta Legal Aid Society that he or she does not have enough assets or income to hire a lawyer or that the cost of hiring a lawyer would cause the applicant or his or her dependents undue financial hardship. Applicants are expected to use all usual and ordinary means of raising funds for their own case before applying for Legal Aid. Applicants must be willing to undertake to repay the Legal Aid Society when and as

circumstances allow. The Society in fact pursues a vigorous collection policy. (See infra.)

There is no residency requirement for applicants for legal aid in criminal matters in Alberta in accordance with the terms of the federal-provincial cost-sharing agreement. In civil matters, an informal reciprocity arrangement has been worked out with most other provinces which results in appointments being made for persons who reside outside the province of Alberta when they are sued civilly in the Alberta courts. A similar arrangement benefits Alberta citizens who are engaged in litigation in other provincial jurisdictions.

Tariffs:

A new tariff for criminal matters was brought into effect on March 11, 1974 establishing a 53% increase across the board.

In civil matters, the 1971 tariff is still in effect although a new revised tariff is expected in a few months.

Experimental projects and Supplementary Services:

The community legal aid interviewer service described above presently operates in Edmonton and Calgary and it is hoped that this service will be expanded to all the mental institutions in the province and the juvenile and family courts.

Notices advertising the legal aid program and the lawyer referral service have been posted in all the wards in the mental hospital at Oliver. Applications for legal aid have been left with the admitting office and social workers have also been informed of the service. Community interviewers will go out to the hospital from Edmonton to interview applicants.

In August 1973 the director and deputy director started weekly visits to the Fort Saskatchewan and Spy Hill correctional institutions in Edmonton and Calgary respectively. During these visits, all applicants for legal aid, including those applying for the first time and for appeal, are interviewed and recommendations as to the merits of appeals and reports are made by the director, deputy director and the assistant director to the regional Legal Aid Committee. Sentence appeals have been particularly successful.

Recently new Legal Aid Posters were prepared by the Solicitor General's Department in cooperation with the Legal

Aid Society of Alberta and arrangements were made for regular weekly visits by Legal Aid interviewers to all four Alberta Correctional Institutions including Lethbridge and Peace River. All interested applicants are interviewed whether applying for assistance in criminal or civil matters.

Criminal legal aid handbooks and civil legal aid handbooks have been prepared by the joint committee and distributed to all members of the Alberta Bar and members of the regional Legal Aid Committees in order to assist them in their duties in administering the plan.

The lawyer referral system also operates out of the Edmonton and Calgary offices of legal aid. The overhead costs of the service are borne by the Law Society of Alberta. This service provides easy means for members of the public to get in touch with a lawyer about a particular problem. It is not a legal aid scheme but it is designed to remove one of the road blocks between client and legal advisor which arises from ignorance of how to get in touch with a lawyer and fear of what the fee will be. The caller is given a list of three lawyers whom he may call upon for advice with the assurance that the interview will not cost more than \$10.

The Legal Aid Society of Alberta is presently examining the advisability of setting up a Pilot Project Neighborhood Law Office. A report on the matter is expected to be submitted to the Joint Legal Aid Committee in the fall of 1974.

In June, 1974 a pilot Duty Counsel Project was set up in the Provincial Judges Courts, which sit twice a week, in Banff and the Gleichen Indian Reserve. Local members of the Bar, whose names were volunteered for the duty counsel list are appointed on a rotational basis to act as duty counsel during court sittings for a fee of \$20.00 an hour. Further consideration will be given to expansion of this service to other Provincial courts in Alberta once the results of this project have been reported and determined.

Financial:

In the 1973-74 fiscal year, the following expenditures were made for legal aid in the province:

Criminal	\$ 591,478.00
Civil	391,761.00
Administrative Costs	219,000.00
Total	<u>\$1,202,239.00</u>

Contributions are sought and recovered from assisted clients and for the fiscal year ending March 31, 1974 \$110,000 was recovered from persons who had received legal aid in Alberta. Approximately \$15,000 a month is now being recovered in cash. \$45,000 has already been recovered in the period April 1, 1974 to June 30, 1974. Down payments are expected with the balance being payable in instalments. Promissory notes are taken but todate no collection proceedings have had to be started. Nine hundred and eighty monthly payments are being received at present under this system. The Legal Aid Society belongs to a credit bureau for the purposes of making spot checks on applicants.

In the 1973 fiscal year, the province budgeted \$1,400,000. For the 1974 fiscal year, the province has budgeted \$1,800,000 for expenditure on legal aid.

Independent and Student Legal Aid Services

Independent and Student Legal Aid Services operating in the province include Edmonton Student Legal Services (operating under grants from the Alberta Law Foundation and the Legal Aid Society of Alberta), Calgary Legal Guidance Services and a Native Courtworker and Counselling Service.

The above mentioned services/projects will be described in more detail in a separate report to be published dealing with independent and Student Legal Aid Services.

SASKATCHEWAN
PROVINCIAL LEGAL AID PLAN

History:

There was no established legal aid plan in Saskatchewan prior to 1967. Residents of the province accused of a criminal offence and unable to afford a lawyer, could obtain legal assistance only if they found a lawyer willing to act for them without charge.

However, in the late 1950's, the Attorney General's Department of Saskatchewan adopted the policy of paying the fees of lawyers when they were appointed by a judge to defend an accused charged in his court. This type of assistance was limited to serious charges.

In 1967 an agreement was reached between the Law Society of Saskatchewan and the Attorney General of the province and a Saskatchewan legal aid plan covering criminal matters only was established. This plan was operated by the Law Society, in consultation with the Department of the Attorney General, through the local Bar associations in the cities of Regina, Saskatoon, Prince Albert, North Battleford, Moose Jaw, Yorkton, Melville, Weyburn, Estevan and Swift Current. The plan also extended to rural areas where the presiding judge of the magistrate's courts or the provincial magistrate acted as the local legal aid committee.

The day-to-day operation of the plan was carried on by local legal aid committees formed in the cities mentioned above. Membership on the committees was voluntary and was made up of local lawyers.

The committees were responsible for interviewing applicants for legal aid, determining the financial eligibility of the applicants, designating and appointing counsel to represent the accused if the offence involved was covered by the plan and the person was financially eligible for legal aid, and also providing reports on the operation of the plan.

The plan provided free legal aid in specified criminal matters to persons who qualified as indigents under the plan.

The 1967 plan has now been replaced by the legal aid program provided for in "the Community Legal Services

(Saskatchewan) Act, 1974". This Act received royal assent and was passed on May 10, 1974.

In civil matters, the Department of Social Services in Saskatchewan had administered a limited legal aid scheme since 1960. Legal assistance was provided for three types of actions: those under the Deserted Wives and Children's Maintenance Act, child welfare proceedings, and affiliation actions.

A lawyer acting for a woman who had commenced proceedings with respect to any of those three matters, and whose client could not afford to pay for his services, was entitled to a maximum fee of \$70 plus reasonable disbursements from the Department of Social Services.

Since 1963, in child welfare proceedings, where action was being taken to have a child removed from the home because of neglect, the Department would also pay reasonable legal fees for the parents if they were financially unable to afford a lawyer.

In 1972, the Department of Social Services estimated total expenditures throughout the province for the program of \$29,000.

The Government of Canada and Saskatchewan entered into a cost-sharing agreement for the provision of legal aid in criminal matters on November 25, 1974.

Plan, Structure and Operation:

"THE COMMUNITY LEGAL SERVICES (SASKATCHEWAN) ACT, 1974"

This Act received royal assent in late April 1974 and was passed on May 10, 1974.

The object of the Act is to provide legal and associated services to persons and organizations in respect of civil and criminal matters where such persons and organizations are financially unable to secure those services from their own resources and where such services are not fee generating services.

The Act establishes a body corporate to be called The Saskatchewan Community Legal Services Commission consisting of nine members. The Commission consists of three members appointed by chairmen of local area boards

from amongst their number; one member appointed by the Lieutenant Governor in Council from among members of the Law Society of Saskatchewan nominated for that purpose by the benchers of the Society; three members appointed by the Lieutenant Governor in Council, one member who is a member of the Law Society of Saskatchewan appointed by the Attorney General of Canada and the person holding the office of Provincial Director.

The provincial Attorney General has a right to appoint the first provincial director who acts as secretary to the Commission, employs staff for the Commission's purposes, negotiates area contracts with boards, and performs other designated duties.

The Commission is empowered to establish eligibility rules, to draw up administrative guidelines for area boards for the provision of legal services, to ratify area contracts with boards, to approve area boards, to retain lawyers to provide legal services under the plan, to encourage and assist university clinical law programs, to authorize the use of students in the provision of legal services and to publicize and implement the Act and the plan.

Area boards hire their own staff, subject to the approval of the Commission, to run the day-to-day operations of the plan in the province. Societies incorporated under the Societies Act of the province can apply to the Commission to be registered as area boards under the Act.

Area boards are empowered to advise the area staff on the legal needs of the area residents, to establish committees to review financial refusals of eligibility, to negotiate area contracts with the provincial director, to establish information and counselling programs, and to advertise the provision of legal services under the Act.

All legal services are provided by employees of the Area Boards or of the Commission. However, the Commission maintains a panel list of solicitors who are prepared to provide legal services in possible conflict of interest situations, in cases provided for under Clause 5(2) of the federal-provincial agreement or where it would otherwise be improper or impossible for any other solicitors to provide the required legal services. In addition, a legal aid recipient has a free choice in all criminal cases coming under the Criminal Code or any other Act of the Parliament of Canada and can choose a solicitor from the appropriate panel to represent him rather than a Commission or Area Board staff lawyer. A solicitor on a panel so chosen has the right to decline his services.

Present Status of Provincial Program

Twelve area boards and an office to serve the Northern part of the province have now been established. It is anticipated that contracts will be finalized with all Boards by early 1975. At the present time the following area offices are staffed by lawyers and are operational:

- (1) Valley Legal Assistance Clinic Society (serving rural Saskatoon);
- (2) Northern Legal Services (La Rouge);
- (3) Saskatoon Legal Assistance Clinic Society (urban Saskatoon);
- (4) Regina Community Legal Services Society (Regina);
- (5) Parkland Legal Assistance Society (Yorkton and rural area);
- (6) South West Community Legal Services (Swift Current and rural area);

It is expected that a number of the other area offices will be operational by January. Approximately twenty lawyers are employed by the various Area Boards at the present time.

Coverage:

(a) Criminal Law:

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in Federal criminal cases. In other criminal proceedings, e.g., summary conviction offences of proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

In the criminal field, the plan provides for a community legal services delivery system with referrals of qualified applicants being made to the Bar only where conflicts exist and special expertise is required. However, the accused will have a choice of counsel where he is charged under the Criminal Code or any other federal statute as mentioned above.

(b) Civil Matters:

It is anticipated that in civil matters, a comprehensive program will be instituted once the provincial regulations have been drafted. The plan is expected to cover everything except fee-generating matters. Staff lawyers would handle civil matters except in cases of conflict or where special expertise is required.

Eligibility:

No guidelines have been established as yet. The formula will likely be tied to social assistance guidelines. Where a person would become eligible for social assistance if he had to pay for a lawyer's services, then he would be eligible for legal aid. There will be a needs test applied.

Tariffs:

These will be fixed by the Commission and, until altered, the old tariff will continue to be applied.

Experimental Programs and Supplementary Services:

The area boards and local clinics will become heavily involved in educational and preventive law programs in the areas of housing, welfare law, and landlord-tenant matters. Training programs for the community may be implemented and legal "checkup" services offered. Street workers and para-professionals may be employed. These decisions will be made individually by the Area Boards.

Both the Saskatoon and Valley Legal Assistance Clinics have experimental programs in such areas as delivering legal services to the rural poor, Low-cost Native Housing projects etc.

Financial:

In the 1972-73 fiscal year, the following expenditures were made for legal aid under the old Criminal Plan.

Criminal	\$216,000
Administrative Costs	<u>12,000</u>
	\$228,000

No figures are available for civil legal aid expenditures.

The matter of financial contributions by legal aid applicants was left to the discretion of the local legal aid committees. These committees also had the power to continue or withdraw legal aid after it had been granted to an applicant, if the applicant's economic means had changed so as to disentitle him financially from receiving legal aid.

In the 1974-75 fiscal year, the province of Saskatchewan plans to spend \$1.7 million on legal aid. Most of the money budgeted for legal aid will go toward financing the area clinics.

Financial contributions from legal aid recipients are left to the discretion of the Commission and where the Commission does require a contribution, the amount owing is considered to be a debt and recoverable in any court of competent jurisdiction.

A law foundation has been established to receive the interest from lawyers' trust accounts but no decision has been made to date as to what will be done with the funds received.

Costs recovered in favour of a legal aid applicant where the services of a solicitor have been provided are payable to and are the property of the Commission. Costs awarded against an applicant where legal services were provided under the Act may be paid on behalf of the applicant by the Commission.

Independent and Student Legal Aid Services

Independent and student legal aid services will be described in a separate report to be published later.

MANITOBA
PROVINCIAL LEGAL AID PLAN

History:

There has always been a semblance of criminal legal aid in Manitoba beginning with the docket brief where the judge would request representation for the accused from the dock.

In 1935, students from the University of Manitoba Law School started to give free legal advice in civil matters, particularly on foreclosure actions, since the Depression was on and many people were losing their homes.

The Law Society of Manitoba later established a Monday Night Centre at the Law Courts Building in Winnipeg where individuals would line up for advice. If the problem was an ongoing matter, an application would be taken for legal aid and if the applicant was below the income guideline, he would be granted legal aid. The lawyers participated on a voluntary rotational basis. In 1969 an applicant had to earn as little as \$250 a month to qualify for legal aid. Divorce actions were not handled except in the most extreme circumstances.

In 1966, legal aid assisted 275 people in civil matters. One lawyer was not allowed to interview an applicant, it had to be 2 or 3 lawyers in order to prevent scooping of clients!

In 1968, the provincial government gave \$40,000 to the Law Society's Legal Aid Committee to support the provision of criminal legal aid in the province. Civil legal aid continued to be given on a purely voluntary basis.

In January, 1969 the government increased its contribution to the Law Society program to \$125,000 having received a commitment from the Law Society that with the appointment of a full time Director, the Law Society program would expand its delivery of legal aid services.

1969 saw the election of an N.D.P. government, which contributed \$300,000 to legal aid. However, the Legal Aid Committee of the Law Society which administered

the funds and the program allotted that entire sum for criminal legal aid cases which left none for civil matters.

In the same year, a Task Force was established to do a study of legal aid programs. The Task Force's report was released in late 1970 and basically recommended that the Ontario program of legal aid be adopted with the exception that an independent agency be formed to run the legal aid program, and that a neighbourhood law centre pilot project and a juvenile court duty counsel system be established.

On July 27, 1971, the Legal Aid Services Society of Manitoba Act was passed and came into force on February 1, 1972.

On May 18, 1973, the Government of Manitoba and the federal government entered into a cost-sharing agreement for the provision of legal aid in criminal matters.

Plan, Structure, and Operation:

The legislative base of the Manitoba legal aid plan is contained in the Legal Aid Services Society of Manitoba Act, passed in 1971 and amended in 1972. The Act came into force on February 1, 1972. The Society exists as a corporate entity, and its operations began in September 1972.

The Board of Directors of the Society is made up of nine persons. The Lieutenant-Governor nominates five persons and the other four are chosen from the list of names submitted by the Law Society of Manitoba. At present, there are six lawyers, one social worker, a woman's rights representative, and a community representative on the Board.

The Board is responsible for budget policy, general policy direction, research and development, community relations, and the hiring and firing of senior personnel. The executive director is appointed by the Board and is responsible for the complete administration of the plan.

The Act provides for the appointment of area directors who must be solicitors, and are appointed as full-time employees. There are five area directors

and two associate directors, in Winnipeg, Brandon, Dauphin, Selkirk, Thompson, Flin Flon and The Pas.

The area directors are responsible for the processing of applications for legal aid in their district and determining financial and legal eligibility within the guidelines of the statute and regulations.

Private practitioners who volunteer to participate in Judicare component of the plan, have their names placed on panel lists. Three separate lists are maintained - for criminal, civil and duty counsel work.

Community Legal Service Offices:

The Act provides for the establishment of neighbourhood legal aid centres, in communities designated for this purpose by the Board. Each clinic is to be run by a senior lawyer with a minimum of five years' experience under the general supervision of the executive director. The regulations provide for the hiring of junior lawyers, articling students, undergraduate law students, social workers and clerical help.

The function of these offices is to advise, assist or represent legally aided clients, as well as to provide the community with information regarding the law and the availability of legal services. With the approval of the executive director, the community office can also represent groups and organizations.

The clinic processes legal aid applications in the same manner as the area director. Solicitors and articling students employed in the clinic may also be directed to act as duty counsel by the executive director.

Each clinic has an advisory committee, appointed by the Board, from a list of nominees submitted by community organizations in the area to be served by the clinic.

There are five such clinics in operation in the province, four in Winnipeg and the fifth in Dauphin.

Thus, the present delivery system is a Judicare - Community Legal Services mix. On an average basis, two-thirds of the cases are presently handled under the Judicare component of the plan.

Personal injury actions are accepted because contingency agreements still exist in Manitoba.

The private Bar is involved in civil matters on a referral basis and is particularly called upon where a conflict exists or special expertise is required.

Breach or promise actions are excluded. In addition private prosecutions in magistrate's court are not handled although in Winnipeg they would be referred to the University of Manitoba Law Centre. That centre would handle private prosecutions, traffic offences and small claims matters.

Eligibility:

Financial eligibility for legal aid in Manitoba is determined according to income guidelines. As of April 1, 1974 the per annum income guideline for a single person was \$5,200. The figures are only guidelines and the test is flexible and discretionary. The value of an applicant's house, car, or family allowance payment is not included in his income. There is an appeal, from a refusal to grant legal aid by the area director, to the provincial Board of Directors.

There is no residency requirement for applicants for legal aid in criminal matters in Manitoba in accordance with the terms of the federal-provincial cost-sharing agreement. Residency is a matter for the discretion of the Executive Director in civil cases. Generally, civil legal aid is granted to non-residents provided they otherwise qualify and the matter is not frivolous. Manitoba has an informal reciprocal arrangement with the other provinces for the provision of civil legal aid for non-residents and the practice is to honour a request from a non-resident if the request is made through the Director's office of the Province where the applicant is resident.

Tariffs:

As of April 1, 1974, the tariff of fees for civil and criminal matters was reduced. The new tariff of fees was established to provide guidance to taxing authorities and limits were placed on preparation time in domestic and criminal matters. There is now a block fee for an uncontested divorce of \$200 and the lawyer must also account for his time in order to claim the

fee. Only 80% of that block fee will be paid to the lawyer initially. If there is any money left in the fee-for-service fund at the end of the fiscal year, the 20% balance would be remitted to the lawyer.

Experimental and Supplementary Services:

Legal aid services are made available in penal institutions. Lectures are given to inmates along with advice on matrimonial, financial and parole problems. Community legal service personnel are going into mental institutions and offering their services to voluntary patients.

The legal aid program is working with age and opportunity bureaux to provide services to old people, particularly with regard to the question of what to do with their savings.

A duty counsel system is being operated in the juvenile courts with student assistance.

Community education is being offered by way of full-time courses in schools on the law. A film is being produced. Lectures are given from grade 1 up.

This educational approach is carried on throughout the province and particularly in the remote areas where lectures on legal rights are given in various communities.

A debt counselling program is being run in conjunction with the Department of Consumer Affairs, and it also covers landlord/tenant and consumer problems.

There is heavy reliance on the Fulltime Staff of the Community Legal Services offices, in carrying such programs forward.

Pamphlets have been produced in layman's language on the courts and the court system of Manitoba so that a person with a grade 4 or 5 education will have no trouble reading and understanding them. The Law Society has also published a brochure on family law, prepared by Legal Aid Manitoba.

A research and education department has been set up and financed by the provincial Department of Education to train six para-legals in a two-year program. After their training, they will be sent out to remote

areas of the province to assist indigents and refer them to the legal aid offices. These trainees have been guaranteed employment once the program is completed.

One courtworker is already working in remote areas of the province on a retainer basis where duty counsel are unable to go in.

A legal aid-on-wheels program is under consideration whereby a train would travel to remote areas of the province in the summer to the Métis and Indian communities giving legal advice. It would operate for four months with one lawyer and one student.

The possible establishment of a conciliation centre to provide marriage counselling in conjunction with the Family Bureau in Winnipeg is being considered. The objective would be to try and remove some of the adversary setting in matrimonial conflicts by establishing a storefront office with teams of social workers and lawyers to narrow the issues down without a court fight.

Legal Aid Manitoba is also working to develop an expertise in the field of parole and is presently developing a program for more effective delivery of legal services to remote areas.

Financial:

In 1973-74 fiscal year, the province of Manitoba spent \$1.4 million on legal aid. The approximate breakdown of this figure is as follows:

(a) Civil	-	\$475,000	
(b) Criminal	-	\$513,000	(including payments to Duty Counsel)
(c) Administrative	-	\$262,000	
(d) Community Legal Services	-	\$115,000	(combining criminal, civil, administrative and program expenses)

Duty Counsel System:

There is a duty counsel system in the province. Legal services are provided by members of the Bar and articling students in all but a handful of criminal courts. Lists are drawn up by the executive and area directors on a rotational basis.

Duty counsel attend the lock-ups and jails and interview interested persons. Appearances, bail applications, remands and speaking to sentence are matters that are handled for everybody by duty counsel regardless of eligibility for legal aid.

Coverage:

(a) Criminal:

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to applicants in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

If the case involves a summary conviction matter to be heard in Winnipeg coming under the agreement, the community legal services offices will handle it. If a case goes beyond the scope of the agreement, it will be referred to the University of Manitoba Law Centre in Winnipeg (a student Legal Services organisation). The private Bar handles most of the criminal matters on a fee-for-service basis.

(b) Civil Matters:

Comprehensive coverage is available in poverty law, areas including consumer protection, welfare rights, landlord/tenant matters, juvenile court, motor vehicle - personal injury action, defamation - if loss can be shown, unemployment insurance matters, workmen's compensation and family law matters. Legal aid is also available to real estate purchasers under the Home Ownership Assistance Program.

In 1973-74 \$40,000 was recovered in contributions from legal aid applicants. For 1974-75 the province has budgeted \$2.1 million for legal aid, the projected breakdown being as follows:

(a) Civil	-	\$800,000
(b) Criminal	-	\$805,000
(c) Administrative	-	\$400,000
(d) Community Legal Services	-	\$230,000

Interest from lawyers' trust accounts is now being collected. The money will probably be divided between legal education and legal aid but no decision on proportions has been made to date.

Independent and Student Legal Aid Services

Independent and Student Legal Aid Services operating in the Province include, a Native Courtworker Program, and the University of Manitoba Student Legal Aid Program(which receives a large proportion of its operating revenues from Legal Aid Manitoba).

There is a self-help divorce group in operation in Winnipeg and the Childrens Aid Society offers a self-help adoption program. Cases are referred to Legal Aid Manitoba if they become contested.

The first self-help taxation centre was assisted into operation by legal aid. It is a non-profit organization with no financial guidelines and operates under a provincial grant. Tax returns are completed for old age pensioners and others. Part of the object of the centre was to undercut the discounters who were buying individual refunds. Under this program, a person is referred to a credit union to obtain his refund if he needs it immediately.

The above mentioned services/projects will be described in more detail in a separate report to be published dealing with independent and Student legal aid services.

ONTARIO
PROVINCIAL LEGAL AID PLAN

History:

In Ontario, prior to 1951, financial assistance was provided by the Attorney-General's Department for legal aid services rendered in a limited number of criminal cases. This consisted of payment of a normal daily fee to counsel at the trial of indigents charged with capital offences, providing transcripts of evidence at preliminary enquiries in these cases and paying counsel's living and travelling expenses. Disbursements in the preparation of appeals to the Ontario Court of Appeal and the Supreme Court of Canada in capital cases were also paid but no payment of counsel fees was provided for. Appeals in writing to the Ontario Court of Appeal in indictable offences were possible through the assistance and cooperation of the Attorney-General for Ontario.

There was no organized civil legal aid system in Ontario before 1951.

The present Ontario Legal Aid Plan was introduced in 1951 with the passing of the Law Society Amendment Act (1951).

This legislation formulated legal and financial criteria required for applicants seeking legal aid. The plan was voluntary. No lawyer was entitled to any remuneration for services provided under the Plan. The plan was administered by the Law Society through the Secretary who was the Provincial Director of the Plan. County and district law associations were required to appoint county and district directors and legal Aid advisory committees.

Applications for legal aid were made to local clinics or local directors. The clinics decided eligibility and made a preliminary assessment of the problem and if necessary referred the applicant to a panel lawyer for further assistance.

Financial eligibility was decided on an income test with the qualification that if the Provincial Director felt that to require payment would impair the applicants ability to provide for himself and his family in respect of essentials necessary to keep them decently fed, clothed, sheltered and living together as a family, then he could grant him legal aid.

Coverage was provided in civil and criminal matters but with certain items specifically excluded. Criminal coverage only extended to indictable offences. Summary conviction offences under the Criminal Code and Provincial Statutes were specifically excluded. Appeals were excluded in both civil and criminal cases except where, in the opinion of the Provincial Director, there appeared to have been a miscarriage of Justice.

Matters excluded from civil coverage included, inter alia, defamation, breach of promise of marriage, alienation of affections, relator actions, and proceedings relating to an election.

Disbursements only were paid to lawyers, and the funds to cover these and other administrative expenses came from the provincial government. The government spent an average of \$50,000 a year on disbursements.

The present tariff-based Judicare legal aid plan in Ontario has been operating since March 29, 1967. The Ontario government and the federal government signed a cost-sharing agreement on criminal legal aid on March 15, 1973.

Plan, Structure and Operation:

The legislative basis for the Ontario Legal Aid Plan is now contained in the Legal Aid Act R.S.O. 1970, as amended in 1973. Section 2 of the Act empowers the Law Society of Upper Canada to establish and administer a Legal Aid Plan, known as The Ontario Legal Aid Plan.

The Law Society, subject to the approval of the Minister of Justice and Attorney-General, appoints the Director of Legal Aid, area directors and other personnel. The Law Society appoints area committees.

The Act constitutes an Advisory Committee on legal aid composed of a judge of the Supreme Court, a judge of the county or district court, a provincial judge, two members of the Bar, a person holding a responsible position in the field of public welfare, and any other persons appointed by the Minister of Justice and Attorney-General.

The Provincial Director is responsible for the day-to-day operation of the plan and is the chief executive officer. He is the secretary of the Legal Aid Committee of the Law Society and is responsible to the Law Society for the proper administration of the plan. He has the authority

to call meetings of all area directors, to consider matters of common interest and to encourage uniformity of practice.

There are 46 area directors appointed under the legal aid plan and they are responsible to the Provincial Director for the administration of the plan within their areas. They act as secretaries to the local area committee but are not members of that committee. They are responsible for establishing and maintaining legal aid, duty counsel and legal advice panels according to the directions of the Provincial Director. The area director calls meetings of the area committees, keeps the minutes of those meetings and reports on the administration of the plan in his area to the Provincial Director.

Area committees have a minimum membership of five persons, the majority of which must be lawyers and members of the Law Society. The area committees are responsible for deciding applications for legal aid in appeal cases, on prerogative writ applications or where the area director refers a matter to the committee. The committee also hears appeals from the refusal of the area director to grant a certificate. The area committee is also there to advise the area director when requested to do so.

Panels:

Any solicitor in good standing with the Law Society can apply to the area director to have his name placed on the list of local practitioners willing to represent persons holding legal aid certificates. In order to have his name placed on one of the area panel lists, the solicitor must maintain an office or have an established practice in the area. The area director can subdivide the panel list into criminal and civil divisions.

Any person holding a legal aid certificate is allowed to choose his lawyer from the established panel lists. General principles governing solicitor-client relations apply. The lawyers are paid according to a tariff of fees set by Regulations under the Legal Aid Act, less a statutory reduction of 25%. The Plan operates basically as a fee-for-service system of legal aid, with the recipient choosing his own lawyer.

Duty Counsel:

The area director is authorized to establish duty counsel panels. Duty counsel are assigned to the local provincial criminal and family courts. They are available to advise accused on their first appearance in court of their right to plead not guilty or guilty, as the case may be, their right to apply for bail or an adjournment, and to make representations on sentence in minor offences where the accused wishes to plead guilty.

The services of duty counsel are not dependent upon the accused's financial position. Duty counsel are paid on an hourly basis. In Metropolitan Toronto, duty counsel services are available on call on a 24-hour basis, for persons who are arrested or detained in police stations.

During the second year of operation of the plan, solicitors were limited to accepting 75 criminal certificates in any one fiscal year. The Director has the discretion to waive the limitation and permit an increase to 125 certificates, subject to the right of the lawyer to appeal the Director's decision to the legal aid committee, if the Director refuses the request for such an increase.

Three Deputy Area Directors have been appointed in Hamilton, Windsor and Ottawa. All area directors serve on a part-time basis, except for York County (which includes Metropolitan Toronto) where the Area Director is employed on a full-time basis.

Coverage:

(a) Criminal Law:

Under the terms of the Federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act, and the Fugitive Offenders Act and in all Crown Appeals in federal criminal cases. In other criminal proceedings, e.g., summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood or special circumstances exist; and in most cases the discretion is exercised in favour of the applicant.

Summary conviction matters are handled subject to the discretion of the area director, where imprisonment or loss of livelihood is a likelihood upon conviction. Appeal matters are subject to the approval of the area legal aid committee.

(b) Civil Matters:

Coverage is provided for cases coming before Supreme, county or district and surrogate courts. Section 13 of the Legal Aid Act also specifies additional civil matters where legal aid certificates are granted in the discretion of the area director; i.e. proceedings in provincial court (family division), small claims court, proceedings before quasi-judicial or administrative boards or commissions (provided it is not an appeal), bankruptcy matters subsequent to a receiving order or an authorized assignment, and contempt of court matters. There is also provision for coverage where legal advice is given or documents drafted or negotiations conducted but once again subject to the discretion of the area director.

Coverage is specifically excluded in defamation proceedings, breach of promise of marriage actions, loss of service of female in consequence of rape or seduction, alienation of affections or criminal conversation; in relator actions, in proceedings for recovery of a penalty which may be taken by any person to whom the penalty is payable in whole or in part, and proceedings relating to any election.

Eligibility:

No financial eligibility test is applied by the Provincial Legal Aid Agency. Eligibility determination is carried out by the Ministry of Community and Social Services. There are no fixed rules, only general guidelines.

The assessment officer, after examining the applicant's financial position, reports to the area director who is responsible for making the final decision as to which persons receive legal aid certificates.

If the application is refused, there is an appeal to the area committee, and a further appeal to the Provincial Director but at the instance of the area director only.

If legal aid is sought for a case that is to be appealed, the decision rests with the area committee and an appeal from their decision lies to the Provincial Director.

There is no residency requirement for applicants for legal aid in criminal matters in Ontario in accordance with the terms of the federal-provincial cost-sharing agreement.

In civil matters where the applicant is a non-resident the application goes to the area director of the place where the event occurred giving rise to the application and the granting of legal aid in such cases is in the discretion of the Provincial Director.

Tariffs:

New tariffs were established and became effective as of September 1st, 1973. Legal Aid fees in criminal and civil matters are subject to a 25% reduction. Most fees are set on an hourly or daily basis with block fees being set for certain items, e.g. uncontested divorces \$320, which after applying the 25% reduction works out to \$240 net for the lawyer.

Out-of-pocket disbursements on a reasonable scale are also recoverable by solicitors, with the approval of the Director or Legal Accounts Officer.

Experimental and Supplementary Services:

24-Hour Service Night Duty Counsel

This service operating in Metropolitan Toronto and the whole of York County ensures that a person accused of serious crimes can phone between 5:00 pm and 8:00 am for the purpose of obtaining advice from a solicitor or by having a solicitor visit him in his place of confinement.

The Hamilton Pilot Project

In November 1972 the Legal Aid Committee implemented a pilot project in Hamilton involving the establishment of a legal aid clinic in co-operation with the Victoria Park North West Community Organization. The project was designed

to facilitate access to summary legal advice and assistance in civil matters. The clinic was established to encourage maximum participation in legal aid by the Bar and in fact was serviced only by private practitioners.

The store-front office approach is emphasized. No legal aid certificate is required before service is given. Financial eligibility is decided by the interviewing lawyers for matters of oral advice and summary assistance.

In civil matters where a legal aid certificate is required, the applicant can choose the interviewing lawyer as his counsel. Accounts are processed summarily.

The whole purpose behind the scheme is to simplify and speed up matters. The project is still operational.

Duty Counsel Clinics in Mental Hospitals

This project has received approval and will start in the fall of 1974. Duty counsel services will be made available to patients in 15 mental hospitals in Ontario.

Legal Aid Pilot Project Islington Band - Whitedog Reserve

This project was set up to demonstrate a more positive and aggressive approach to the delivery of legal services in the more remote regions of the province.

The project began in 1972 and had as its objective an attempt to curb the drinking problems amongst the native population assist the reserve people to achieve self-sufficiency and to organize groups in the community around specific issues.

Delivery of Legal Services to Northern Ontario

This problem is being carefully considered at the present time. Travel warrants for recipients have now been authorized. Area directors are now allowed to receive collect long-distance phone calls from remote areas. Native liaison officers are to be located on the Indian reserves.

Group Applications

The granting of "group" certificates and group representation generally is being considered by the Osler Task Force.

Osler Commission

On December 13, 1973 a Task Force on Legal Aid chaired by Mr. Justice John Osler was appointed by the Attorney-General for Ontario to study the existing legal aid plan to make comprehensive recommendations, in relation to the delivery of legal aid services in the province. In addition to Mr. Justice Osler of the Supreme Court of Ontario, Trial Division, the chairman, there are six other members. The Task Force is expected to submit their report by the end of 1974.

Financial:

In the 1973-74 fiscal year, the following expenditures were shown for legal aid in the province:

Criminal	\$ 4,985,000
Civil	4,355,000
Fees for Legal Advice	160,000
Duty Counsel Fees	
- Criminal	1,240,000
- Civil	413,000
Administrative Costs	2,998,000
Pre-completion disbursements	
- Criminal	15,000
- Civil	40,000
	<hr/>
	\$ 14,206,000

Contributions are required from legal aid applicants where the area director decides the applicant can afford to pay under Sections 17, 18 and 19 of the Act. Costs recoverable in a civil action must be assigned to the Plan. In the 1973-74 fiscal year, \$631,000 was recovered from clients directly and \$656,000 was recovered in costs in civil actions.

The Ontario budget for legal aid in the 1974-75 fiscal year is estimated at \$15,459,000.

A foundation has been established as of 1974 to receive the interest from lawyers' trust accounts. Seventy-five per cent of this money will be paid to the Legal Aid Plan.

Independent and Student Legal Aid Services

Independent and student legal aid services operating in the province include a Native Courtworker Program. Student university run legal aid programs: Ottawa (University of Ottawa Student Legal Aid); University of Toronto (University

of Toronto Campus Legal Assistance Centre); Osgoode (Parkdale Community Legal Services); London (University Legal Clinic); Windsor (Legal Assistance of Windsor); Queen's (Correctional Law and Legal Assistance Seminar at Queen's).

In addition there are a large number of Community-based legal services organizations including Don District Neighborhood Legal Services, People and Law, Problem Central, Injured Workmans Consultants etc.

The above-mentioned services/projects will be described in more detail in a separate report to be published dealing with independent and student legal aid services.

QUEBEC
PROVINCIAL LEGAL AID PLAN

History:

Legal "assistance" in Quebec emerged in 1951 through creation of a legal aid service of the Bar section of Quebec. In February 1956, the junior Bar of Montreal created a private non-profit corporation: the Legal Aid Bureau of the Bar of Montreal. A permanent secretariat was opened under the direction of an advocate employed full-time to receive potential clients and to cope with applications for legal assistance.

The legal aid applicant who was found eligible for services was referred to a member of the Bar in private practice, who provided his professional services on a voluntary basis. Legal and other costs were paid by the Legal Aid Bureau and for the first ten years, the funds necessary for the proper operation of this Bureau were provided by members of the Bar. Legal aid was provided in all areas of law and before all courts, if funds were available to meet disbursements and other costs.

In 1967, in an effort to assist in the establishment of a broader service, the Government of Quebec began to make increasingly larger annual grants. During the year April 1, 1970 to March 31, 1971, more than 18,000 persons received professional services of advocates free of charge through the Montreal Bureau. More than 4,550 of these persons were assisted by more than 1,550 advocates in private practice. The others were assisted by salaried advocates of the Bureau. With a constant increase in the number of applications, the latter could no longer meet the established needs and advocates in private practice who assisted them continued to do so on a voluntary basis.

In an attempt to create the beginnings of a more structured legal assistance program for the province, the Bar of the Province of Quebec and the provincial Department of Justice signed two successive agreements during the winter and summer of 1971. Under the second agreement, the Bar agreed to provide legal assistance in criminal matters. The tariff was to be 60% of an established fee schedule. The Bar agreed to provide services free of charge in civil matters.

In 1970, 1971 and 1972 legal clinics were set up in disadvantaged areas of Montreal, Quebec City and Sherbrooke. The Montreal and Quebec Bars and the the provincial Bar Society also set up legal assistance bureaux. Co-ordination was lacking and much of the work was still being done on a voluntary basis.

On July 8, 1972 the Legal Aid Act of the Province of Quebec received royal assent. On August 23, 1973 members of the Legal Services Commission provided for under the legislation were appointed.

On December 12, 1972 the Province of Quebec and the Federal Government of Canada entered into a cost sharing agreement for the provision of criminal legal aid services in the province.

Plan, Structure and Operation:

The Legal Aid Act was passed by the National Assembly in July 1972, was partly proclaimed in September 1972, was amended in December 1972 and wholly proclaimed in June 1973.

The Act creates a corporate body, the Legal Services Commission, to administer the plan. The Commission operates from Montreal and is made up of twelve members chosen for their appreciation of, and concern for, the legal problems of the underprivileged.

The Commission is responsible for seeing that legal aid is provided to economically underprivileged persons, and for this purpose must establish and develop regional legal aid corporation and empower them to provide legal aid. The Commission finances the regional and local corporations which are the component parts of the plan responsible for the actual delivery of legal services.

The Commission encourages the development of information programs and legal education programs for indigents.

Regional Corporations:

Eleven regional corporations are presently in existence under the Quebec Legal Aid Plan. These are community legal centres and their names must include that notation as required by the Legal Aid Act.

Regional corporations have the status of corporations under the Civil Code and are responsible for providing legal aid in their geographical areas. They carry out this function by establishing legal aid bureaux in various parts of their territory depending on the needs of the population.

Advocates are hired on a full-time basis along with the necessary support staff. The regional corporation recommends the establishment and certification of local legal aid corporations where a need is established, and the establishment of an advisory committee with a maximum of twelve members with area representation to promote the needs of local indigents.

Local Corporations:

These are legal entities incorporated under Part 3 of the Quebec Companies Act. In fact, most of these local corporations were in existence and were providing legal services before the Legal Aid Act was passed. Five local corporations are now in existence. They have been established at Laval University, at Point St. Charles, at the University of Sherbrooke, at St. Louis, Montreal, and one in Hull, which is attached to the University of Ottawa. Before the Legal Aid Act was passed, these clinics provided mainly criminal legal aid assistance handled by staff and other lawyers on a rotational basis. Funds were obtained from the Quebec Department of Justice and the Bar Society.

These local corporations tend to be more independent in operation than the bureaux offices although their funding now comes from the regional corporations on an annual basis and therefore certain standards and criteria have to be met. Indeed, the regional corporations, having jurisdiction in a region, must see that the activities of a local corporation are integrated within the overall legal services provided in the region, and that such local corporations comply with the Act and Regulations.

Bureaux:

There are 67 bureaux offices now operating in the Province of Quebec. The total number of lawyers working full-time in the legal aid program is estimated at 213, of whom approximately 50 work in the criminal area.

Applications for legal aid are received and processed by the local bureaux offices. In all cases, if an applicant is financially and legally qualified, a legal aid certificate will be issued. But where consultation only is provided, a certificate might not be given.

Once an applicant has a legal aid certificate, he has an absolute free choice of counsel, providing that the established tariff extends to cover the type of legal problem involved. He may choose a member of the private Bar or a full-time salaried bureau lawyer to represent him. Staff lawyers will only make referrals where there is a conflict of interest, where the office staff lack the necessary experience or where the workload is too heavy.

In 1973-74 the Plan processed 92,517 applications, 86,816 (93.8%) of which were accepted. Of this number, 84,112 were handled by lawyers and 2,704 by notaries. The civil and administrative sectors were involved in 60,553 applications (72%), and the criminal sector in 23,559 (28%). The delivery cost in the criminal sector is less than in the civil sector.

Duty Counsel

There is a duty counsel system operating in the courts of Quebec, but the system operates differently in each locality. In Montreal, there is one bureaux office of 30 criminal lawyers and they attend all the criminal court sessions. In Quebec City, five staff lawyers handle the criminal courts on a rotational basis.

In the rest of the province, the system is very flexible. In particular cases a judge may suggest an accused obtain the services of a lawyer and refer him to the local bureaux or a private lawyer may act in an emergency.

Coverage:

(a) Criminal Law:

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant. Coverage is also provided for provincial criminal offences.

(b) Civil Matters

Coverage in this area is comprehensive. The following matters are excluded:

- (1) an action for defamation or an action for libel, plaintiff only;
- (2) an action in contestation of an election;
- (3) an action in case of usurpation of offices or franchises;
- (4) an action for damages for breach of promise of marriage, plaintiff only;
- (5) an action for damages resulting from alienation of affection, plaintiff only;
- (6) an action in respect of which a fine is likely to be payable, in whole or in part to the claimant, plaintiff only;
- (7) any defence relating to an offence against laws or bylaws respecting parking.

Eligibility:

A guideline income test is applied. For a single person, the applicant must have a gross weekly income of \$70 or less; for a couple it is \$95 and \$15 for the first dependent and \$10 for the second. The test is flexible and discretionary. It has been estimated that these eligibility criteria could mean that 2 million persons or a third of the provinces population could be eligible for legal aid services.

In every case, financial eligibility is a decision for the individual lawyer and no applicant will be refused legal aid on these grounds without an interview. Appeals from refusals are made to a provincial review board whose decision is final.

There is no residency requirement for applicants for legal aid in criminal matters in Quebec in accordance with the terms of the federal-provincial cost-sharing agreement. In civil matters, legal aid is granted to non-residents on a case-to-case basis.

Tariffs:

A new criminal tariff adopted specifically for legal aid was approved and made effective on June 4, 1973.

The existing tariff for civil matters is the same one established in 1923 which dealt with tariffs for all matters before the courts. The civil tariff has divisions which automatically take into account increased costs due to inflation. Tariffs under Section 81 have been proclaimed by decree and continue from month to month. A new civil tariff has been under negotiation between the Department of Justice and the Bar for some time. A change is expected soon.

Experimental and Supplementary Services

The legal aid program has a research department staffed by two sociologists and three lawyers - one criminal and two civil. Someone is in charge of publications and a new full-time staff member is to be hired to look after education.

A project in sociology has been operational for over a year looking into the "legal needs of the poor in the Province of Quebec."

A project on "matrimonial law" has been started and discussed with the federal Law Reform Commission and the Civil Code Revision Committee.

A project studying "class actions" is also underway. Class actions are not permitted in Quebec at present.

There is a possibility that a pilot delivery project in the immigration area will be undertaken at Dorval Airport in the near future.

Financial:

Actual plan expenditures for the year ending March 31, 1974 were \$8,036,737. In addition, the creation of a reserve fund in excess of \$3,000,000 for mandates issued, brought total plan expenditures to approximately \$11,250,000. Of the amount spent in the delivery of services, \$2,221,400 was attributed to expenditures related to the Criminal Legal Aid Component of the plan. This figure covers only those costs claimable under the federal-provincial Criminal Legal Aid Agreement. Expenditures for the fiscal year ending March 31, 1975 are expected to exceed \$6 million.

Independent and Student Legal Aid Services

Independent and student legal aid programs will be described in a separate report to be published later.

NEW BRUNSWICK
PROVINCIAL LEGAL AID PLAN

History:

Prior to the establishment of the present Criminal - Quasi-Criminal Legal Aid Plan, legal aid was only available where lawyers were prepared to provide the necessary services on a voluntary basis.

Legal Aid New Brunswick began operating on January 1st 1972.

On January 11, 1973, the Province of New Brunswick and the Federal Government of Canada entered into a cost-sharing agreement for the provision of criminal legal aid in the province.

Plan, Structure and Operation:

The legislative authority for the New Brunswick legal aid scheme is contained in the Legal Aid Act passed in 1971 and amended in 1973.

The Act establishes a program called "Legal Aid New Brunswick". Under this Act a Legal Aid Committee, with not less than five members of the provincial Barristers' Society represented, was established as an advisory committee on administrative policy matters to the provincial director of legal aid. The provincial director is appointed by the Barristers' Society.

The provincial director was appointed in September 1971 and the legal aid plan, as provided for under those parts of the Act that had been proclaimed began operations on January 1, 1972. The Barristers' Society is empowered to establish regional legal aid offices to be run by area legal aid directors. These offices and their area directors are responsible for the issuing of legal aid certificates and for drawing up panels of solicitors willing to offer their services to legal aid applicants. The eight area directors are also responsible for the appointment of duty counsel.

Eight area Legal Aid Committees have been established to advise the area directors and to hear appeals from refusals to grant legal aid. The area directors are all practising lawyers and fulfill their functions as directors on a part-time basis. Besides the provincial director in the main office in Fredericton, there are eight area directors located in Fredericton, Saint John, Moncton, Newcastle, Bathurst,

Campbellton, Edmunston, and Woodstock. There are no staff lawyers employed. There are full-time secretaries employed in Saint John, Fredericton and Moncton only and part-time secretaries in the other five cities.

Once certificates of legal aid have been issued by the area directors, applicants are referred to the lawyers listed on the appropriate panel lists. At the present time, panels have only been drawn up to cover the criminal area.

Those parts of the Legal Aid Act providing for coverage in civil matters, have not yet been proclaimed in force.

There is a duty counsel system in operation in the province. Lawyers are appointed on a rotational basis from the appropriate panel list and work for a week at a time in a particular court while it is in session. Duty counsel are paid on an hourly basis. Duty counsel inform applicants of their right to choose other counsel and if necessary refer them to the area director for that purpose. They also advise persons appearing before such courts on matters such as pleas, the right to request an adjournment and to request bail.

The duty counsel system is the most comprehensive and geographically extensive part of the provincial legal aid program. Duty counsel operate in every criminal and family court in every sitting in the province, even on Campobello Island and Grand Manan Island.

The duty counsel system has been used in the family courts and duty counsel sit through all the proceedings of that court while it is in session. Certificates are not usually issued but on-the-spot representation is given in situations where, as under the Deserted Wives and Children's Maintenance Act, the defendant may go to jail because of continuous default or contempt of court in failing to follow court orders. This notwithstanding that those parts of the Legal Aid Act covering civil matters have not yet been proclaimed (supra).

Coverage:

(a) Criminal Law:

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person who is charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings,

e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

(b) Civil Matters:

As stated above, the relevant parts of the Act providing coverage in civil matters have not been proclaimed. However, there is a duty-counsel system operating in the family courts that does provide some necessary assistance.

Eligibility:

An income guideline test is applied. These are guidelines for the area directors and discretionary.

Appeals from the area director's refusal to grant a legal aid certificate are made to the area committee whose decision is final.

There is no residency requirement for applicants for legal aid in criminal matters in New Brunswick in accordance with the terms of the federal-provincial cost-sharing agreement.

Tariffs:

The criminal tariff set out in Regulation 114, passed in 1971, is still operative. Duty counsel are paid hourly.

Financial:

In the 1973-74 fiscal year, the following expenditures were made for legal aid in the province:

Criminal	\$210,810.47
Duty Counsel	119,907.51
Administrative Costs	134,266.41
Total	<u>\$464,984.39</u>

Contributions are recovered and in 1973-74 amounted to \$4,329.37, with \$29,633.41 outstanding and owed by legal aid clients to Legal Aid New Brunswick.

On June 4, 1973, the federal government received New Brunswick's first claim under the criminal legal aid cost-sharing agreement for the period January 1, 1973 to March 31, 1973. The federal government's claimable contribution

amounted to \$77,021.05.

For the 1974-75 fiscal year, the New Brunswick Barristers' Society has recommended an increase in the provincial budget for legal aid of \$300,000 for a total in 1974-75 of \$760,000 which, in their opinion, would be adequate for the first full year of implementation of legal aid in civil matters.

Independent and Student Legal Aid Services

Independent and Student Legal Aid Services operating in the Province include a Native Courtworker program, Saint John Legal Aid Inc. an incorporated body that employs a full-time lawyer but is otherwise organized staffed and administered by local volunteer lawyers. (presently funded by the Provincial Attorney General Department; and a self-help Divorce Service.

In Fredericton Community Legal Services an organization staffed by a full-time lawyer and students from the Law School (who work under the supervision of local practising lawyers) provide wide-ranging civil legal aid services in addition to carrying out experimental research programs.

NOVA SCOTIA
PROVINCIAL LEGAL AID PLAN

History:

In Nova Scotia, prior to 1970, legal aid services were provided on a voluntary basis, through an established legal aid committee of the Nova Scotia Barristers' Society, which designated a number of legal aid districts for the province.

The committee appointed a full-time director, a senior panel, a panel of counsel and a junior panel of lawyers for each district. In Halifax the junior panel consisted of the most junior fifty-two practicing barristers and each were required to attend two legal aid clinics a year. Articled clerks were also required to attend the clinics on a rotational basis to assist the junior panel at the discretion of the local director. The senior panel was available to advise any member of the junior panel on legal problems encountered.

The Barristers' Society provided funds for administrative, operational and advertising expenses only. Lawyers were not paid for their services. Legal aid clinics were held in each legal aid district on at least one evening a week by two members of the junior panel. The time and place of the clinics were advertised by notices in the court offices and in the offices of co-operating welfare agencies.

The first half-hour of advice was always free but if the problem was ongoing and the applicant could afford it, contributions were required. In civil matters, assignments of costs were taken. In criminal cases, and before the opening of the Supreme Court sessions, the county sheriffs interviewed possible legal aid applicants and referred them to the local director of legal aid. In 1970, the Attorney General of Nova Scotia constituted a committee to study the legal aid situation in the province, and that committee reported in 1971. The committee recommended the establishment of a "comprehensive publicly funded legal aid plan."

The Province of Nova Scotia responded by enacting the Legal Aid Planning Act, which simply authorized the making of agreements, arrangements and regulations pertaining to legal aid. On October 13, 1971, an agreement was signed between the Province of Nova Scotia and the Nova Scotia Barristers' Society to implement a trial legal aid program. The concept of this trial program was, and still is the provision of legal services throughout Nova Scotia

by the Barristers' Society through regional offices and sub-offices staffed by full-time salaried lawyers employed by the Society. The program was funded by the province, although gratuitous assistance was expected from the bar until the service had expanded sufficiently to meet the demands.

The existing Nova Scotia legal aid program commenced operations with the opening of the first full-time office in the city of Halifax in April 1972. The establishment of regional offices was completed over a year later with the opening of an office in Amherst, Nova Scotia.

On January 26, 1973 the province entered into a cost-sharing agreement on criminal legal aid with the federal government and this change was reflected on March 1, 1973 in a supplementary agreement on legal aid between the province and the Nova Scotia Barristers' Society.

Plan, Structure and Operation:

The Legal Aid Committee of the Nova Scotia Barristers Society is responsible for the operation and administration of legal aid in Nova Scotia. The Barristers Society has employed an Executive Director, located in Halifax to supervise the day-to-day operations of the plan and to administer the regional offices.

There are 8 regional offices located in Amherst, Sydney, Antigonish, New Glasgow, Truro, Kentville, Bridgewater and Yarmouth. The main office for the Halifax-Dartmouth area and the Province is in Halifax and there is also a sub-office in that city located close to the Court House which is designated to handle criminal matters only. Unstaffed sub-offices are maintained at Port Hawkesbury, Liverpool, Windsor, Digby and Shelburne. The program employs 24 staff lawyers, 3 articling students and 4 legal assistants. Eight staff lawyers are located in Halifax and 3 in the Sydney area. In addition there are approximately 20 secretaries making a total staff of 54.

All cases eligible for legal aid are handled by staff lawyers except where an offence under Section 5(2) of the federal-provincial cost-sharing agreement is involved and, where there is a conflict of interest.

There is no duty counsel system per se in Nova Scotia. However, as a matter of practice staff lawyers are constantly in the criminal courts and are always quite prepared to advise or represent an accused on the spot if necessary.

Coverage:

(a) Criminal Law:

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in Federal criminal cases. In other criminal proceedings, e.g., summary conviction offences of proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

Criminal matters not covered by the federal-provincial criminal legal aid agreement are often handled by Dalhousie Legal Aid Service in Halifax.

Some provincial offences e.g., minor traffic offences are not handled under the Provincial Plan.

(b) Civil Matters:

There are no established restrictions on the legal services that can be provided by Nova Scotia Legal Aid. However internal priorities will see the exclusion of certain matters according to the workload of the staff lawyers.

Eligibility:

A needs test is applied by staff lawyers using specified income guidelines e.g. for a single person this has been set at \$3000. per year. The test is flexible and in applying their discretion staff lawyers who determine eligibility will take into account assets and liabilities to determine whether or not a person can afford to pay for the services of a lawyer.

There is no residency requirement for applicants for legal aid in criminal matters in Nova Scotia in accordance with the terms of the federal-provincial cost-sharing agreement.

In civil matters residency is a matter of discretion for the Provincial Director who may grant legal aid on the merits of the case to a non-resident.

Tariffs:

Tariffs of Fees and Disbursements for Counsel in Private Practice were adopted in the first supplementary agreement between the Province and the Barristers Society entered into on March 1st, 1973.

The criminal tariff fees are, for the most part, based on a per hour or per diem fee basis. All criminal tariffs are subject to a 25% reduction. Disbursements of a reasonable nature are allowed subject to the approval of the Executive Director.

Experimental and Supplementary Services:

In 1973 arrangements were made for a special service to be offered to inmates at Dorchester Penitentiary and the Springhill medium security institution. A staff lawyer from Nova Scotia Legal Aid visits both institutions on a regular basis and interviews inmates with legal problems and concerns. This is essentially a referral service as most of the legal work has to be referred back to the appropriate legal aid office.

A special office was established to deal exclusively with criminal matters and litigation in Halifax.

A special "Judicare" project was started in the Metropolitan area of Cape Breton. The Sydney Legal Aid office had a backlog of approximately 160 divorce applications. Arrangements were made whereby private lawyers agreed to take groups of divorce applications for processing on a reduced fee basis. The "Sydney Project" will eliminate the backlog of cases as well as providing the plan with some experience in working a judicare supplement to the existing plan.

Financial:

In the 1972-73 fiscal year approximately \$446,000 was spent by the province on legal aid.

In the 1973-74 fiscal year the sum was \$746,151.93. The breakdown of expenditures published in the Programs 1973-74 Report is as follows:

Service	\$ 606,511.65
Office	\$ 118,395.36
Other	\$ 21,244.92

Service includes Salaries, Legal Disbursements (Criminal) Legal Disbursements (other), Travel Expenses and Library;

Office includes Rent, Telephone, Heat and Power, Office operational, Furniture and Rentals;

Other includes Blue Cross, Advertising, Business Tax, Miscellaneous and Petty Cash.

The project operating budget for 1974-75 is \$925,000.

No contributions are required from legal aid applicants.

Independent and Student Legal Aid Services

Independent and student legal aid services based or operating in the province include the following:

(a) Dalhousie Legal Aid Service - a student legal aid service with a full-time staff of eight including two to three lawyers, community developer, para-professionals etc. The service handles minor criminal matters, landlord and tenant problems, workmens compensation and social assistance matters, unemployment insurance, some motor vehicle matters and a large amount of family law work.

(b) There is a "Family Rights" program operating out of the family courts in Halifax and Sydney. Financed on an experimental basis by the federal and provincial governments the program employs staff lawyers to provide duty counsel in the family courts and to some extent in the juvenile courts.

(c) A Do-it-yourself" Divorce, matrimonial and consumer counselling program is operated by Matrimonial Counselling Association, a non-profit community based society operating out of the family service bureau in Halifax.

(d) A full-time legal services project operating in the maximum security federal penitentiary at Dorchester

New Brunswick; and employing a full-time lawyer, director and three para-professionals is also based in Halifax at the present time.

The above-mentioned services/projects will be described in more detail in a separate report to be published dealing with independent and student legal aid services.

PRINCE EDWARD ISLAND
PROVINCIAL LEGAL AID PLAN

History:

Prior to October 1973, there was no official organized legal aid plan in Prince Edward Island. Where an individual, charged with a serious offence, could not afford a lawyer, the Court or a lawyer referred him to the provincial Department of Justice and that Department arranged for a private member of the Bar to represent him. The lawyer submitted his bill to the Department after the completion of the case, according to whatever fee he felt the work was worth, and the Department would usually pay his account.

The same procedure was followed in a lawyer's office with a client who could not afford the fee. The lawyer would write to the provincial Department of Justice outlining the problem, and if the Department thought representation was necessary, it would appoint a member of the Bar to handle the case and would pay his fee.

On April 10, 1973, the MacKimmie Report, dealing with the constitution of the courts and judicial and quasi-judicial institutions and certain other aspects of the administration of justice within the province, was completed. One of the recommendations of this report was that the province adopt a Public Defender System for the provision of legal aid services in criminal matters. However, just before this report was completed, the government had introduced into the Legislative Assembly a Bill to establish a fee-for-services or judicare system of legal aid for the province to become effective April 1, 1973. The Bill was passed and received royal assent but it has never been proclaimed. Instead, on October 1, 1973 the province introduced a Public Defender System to provide legal aid services in criminal cases.

In October 1973, the Government of Prince Edward Island and the Federal Government entered into a cost-sharing agreement for the provision of legal aid in criminal matters.

Plan, Structure and Operation:

There is no legislative basis for the legal aid plan in Prince Edward Island as it exists today. The government has decided to implement the public defender system on a three-year trial basis and has hired under contract a private practitioner to administer the program. The program is operated as part of the Justice Department of the Government of Prince Edward Island. There are two public defenders under contract to the provincial government, one of whom is also the plan administrator.

The administrator is under contract for three years and works as a public defender based full-time in the Charlottetown office. The other public defender is under contract to the government for one year and operates out of both the Charlottetown and Summerside offices. One secretary completes the legal aid staff.

The Charlottetown office has been opened full-time since December 17, 1973. The Summerside office opened in February, 1974 and operates three days a week. The Supreme Court of Prince Edward Island sits in Georgetown as well as Charlottetown and Summerside, while Magistrate's Court also sits in Alberton and Georgetown which are fairly close to Charlottetown and Summerside. Since distance is not a factor, there are no plans to open additional legal aid offices.

Coverage:

(a) Criminal Law:

Under the terms of the federal-provincial cost sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person who is charged with an indictable offence, and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant in

those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases, the discretion is exercised in favour of the applicant.

(b) Civil Matters:

There are no publicly announced plans to extend coverage to civil matters in the immediate future in Prince Edward Island.

Eligibility:

An income test is applied in determining an applicant's financial eligibility for legal aid. The test is flexible and takes into account liabilities and living expenses and is administered by the two public defenders. The public defenders have access to Department of Social Services and Welfare files for information purposes relating to financial eligibility.

There is no residency requirement for applicants for legal aid in criminal matters in Prince Edward Island in accordance with the terms of the federal-provincial cost-sharing agreement.

Tariffs:

A tariff of fees has been established solely for those cases coming under Section 5(2) of the federal-provincial cost-sharing agreement on criminal legal aid, where the applicant is allowed free choice of counsel. The lawyer submits his account to the legal aid office and it is forwarded to the Department of Justice for payment. All approved accounts are subject to a 25% reduction.

Experimental Projects and Supplementary Services:

There are no offices or organizations delivering supplementary legal aid services independently of the provincial legal aid plan in Prince Edward Island.

Financial:

In the 1973-74 fiscal year, the following expenditures were made for legal aid in the province:

Criminal	\$23,000
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This amount covers an effective operating period of six months.

Financial contributions from legal aid applicants are not required.

NEWFOUNDLAND
PROVINCIAL LEGAL AID PLAN

History:

In 1964, the Law Society of Newfoundland appointed a committee to explore the whole matter of legal aid with a view to the establishment of an adequate system of legal aid in the province. The committee made its initial recommendations in 1966 and in 1968, with the assistance of a provincial government grant of \$10,000, a legal aid plan was started. Office space was provided by the provincial government and a full-time secretary was employed. At that time, applicants were interviewed by solicitors on a voluntary basis and cases were assigned to members of the Society who provided their services free of charge.

The provincial government grant was substantially increased from year to year and a full-time administrator was engaged effective January 1, 1972. On February 21, 1973 the Government of Newfoundland and the Federal Government entered into a cost-sharing agreement for the provision of legal aid in criminal matters.

On March 23, 1973 the Minister of Justice of Newfoundland designated the Legal Aid Committee of the Law Society of Newfoundland as the provincial agency responsible for the administration of the agreement respecting legal aid in criminal matters.

This agency also administers legal aid in civil matters and the provincial government still provides a grant for the cost of administering both the criminal and civil aspects of the plan, in addition to covering the delivery of civil legal aid services.

Plan, Structure and Operation:

There is no legislative basis for the legal aid plan in Newfoundland. The Legal Aid Committee of the Law Society operates the plan. The provincial administrator is hired by the Committee and is responsible for the day-to-day operation of the plan.

The plan is operated administratively through two offices in St. John's and Corner Brook and a duty counsel

system in five other locations. The St. John's office is open daily and is operated by the provincial administrator. He does little court work and spends most of his time on administrative matters.

The Corner Brook office is open for half a day every day to receive legal aid applications and is run by the Corner Brook representative on the province's Legal Aid Committee. Lawyers in Corner Brook who attend the office volunteer their services on a rotational basis every Wednesday night to process and review the applications taken in by the secretaries during the half days the office is open.

The program is a judicare one in both criminal and civil areas with qualified applicants being allowed a free choice of counsel from established panels in St. John's. In Corner Brook qualified applicants will be assigned counsel (a private practitioner) on a rotational basis except in cases where a person is permitted free choice of counsel under the terms of the federal-provincial agreement covering criminal legal aid (those offences where the penalty is life imprisonment or capital punishment).

In the rest of the province, there are no established legal aid offices. There is, however, a duty counsel scheme in effect in Stephenville, Grand Falls, Gander, Harbour Grace, and Labrador City, in addition to St. John's and Corner Brook. The number of lawyers in those centres is usually so small that one local firm or one lawyer becomes the permanent duty counsel. For the first hour that Court is open in the morning, duty counsel handle all cases docketed. The duty counsel have a list of lawyers willing to volunteer their services at their disposal and also operate a referral service for applicants seeking legal aid.

The duty counsel system in Corner Brook and St. John's is staffed by members of the local Bar who have indicated their willingness to participate in the scheme. Duty counsel are paid \$30 an hour to a maximum of \$150 per week for their services.

With the exception of the duty counsel scheme, the system of legal aid in Newfoundland operates on a referral basis.

Coverage:

(a) Criminal Law:

Under the terms of the federal-provincial cost-sharing agreement on criminal legal aid, the provinces are obliged to make legal aid available to any financially eligible person charged with an indictable offence and in all proceedings pursuant to the Extradition Act and the Fugitive Offenders Act and in all Crown appeals in federal criminal cases. In other criminal proceedings, e.g. summary conviction offences or proceedings under the Juvenile Delinquents Act, the provinces have a discretion in granting legal aid to an applicant to those cases where there is a likelihood of imprisonment or loss of livelihood; and in most cases the discretion is exercised in favour of the applicant.

(b) Civil Matters:

Where financial eligibility is established any civil matter will be undertaken except for:

- (1) Divorce and matrimonial cases including judicial separations, nullity, alimony actions, maintenance orders, alienation of affections, unless the applicant has been referred in writing by a qualified social worker, who must indicate that legal aid is required for the benefit of infant children, or that the applicant has obtained a letter of recommendation from a qualified medical practitioner indicating that the health of the applicant or his or her children may be endangered by the continuing matrimonial problems;
- (2) Defamation;
- (3) Breach of promise of marriage;
- (4) Private prosecutions in criminal and civil matters;
- (5) The obtaining of letters of probate or letters of administration of estates, except where refusal would work undue hardships;

- (6) Proceedings relating to any election;
- (7) Proceedings subsequent to judgment for recovery of a liquidated sum;
- (8) Proceedings in bankruptcy subsequent to a receiving order or authorized assignment;
- (9) Small debts, court matters;
- (10) Family court matters;
- (11) Appeals except where it appears that there has been, or may be, a substantial miscarriage of justice;
- (12) Matters where the furnishing of legal services would confer no real benefit upon the applicant and matters where, if the applicant were able to pay, he would be advised not to proceed with the matter because the cost would be disproportionate to the benefit to be obtained. Legal aid will not be granted to enable persons to pursue remedies which they would not choose to pursue if able to pay in the normal way;
- (13) Matters where the administrator, a Legal Aid Committee or the Legal Aid Committee of the Benchers or the local bar association, as the case may be, decided that because of special circumstances legal aid should not be granted.

Eligibility:

A person qualifies for free legal aid if requiring him to pay legal fees would impair his ability to furnish himself or his family with the essentials necessary to keep them decently fed, clothed, sheltered and living as a family, or where he is at the moment without funds and requires immediate legal assistance for the preservation of his legal rights. It is understood that the provision of legal aid services may be terminated upon the applicant becoming financially able to obtain legal services in the usual way. There are no specific financial guidelines used in the determination of eligibility.

There is no residency requirement for applicants for legal aid in criminal matters in Newfoundland in accordance with the terms of the federal-provincial cost-sharing agreement. There is also no residency requirement for legal aid in civil matters in Newfoundland.

The recipient of legal aid may be required to contribute toward his legal costs to the extent that he can do so without suffering undue financial hardship such as incurring heavy indebtedness or being required to dispose of modest necessary assets.

Tariffs:

Tariffs for both criminal and civil matters were established in June 1972 by Order-in-Council.

Financial:

In the 1973-74 fiscal year, the following expenditures were made for legal aid in the province:

Criminal	\$ 65,000.00
Civil	68,000.00
Administrative Costs	<u>33,100.00</u>
Total	<u><u>\$166,100.00</u></u>

No financial contributions are required from legal aid applicants in Newfoundland.

Independent and Student Legal Aid Services:

In the summer of 1974, the Consumer and Social Action Centre, a community based organization in St. John's, with the aid of federal funds, employed four law students to advise people of their rights and embarked upon a preventive law and legal education program throughout the province. A neighbourhood office was established and students travelled to and provided the above-mentioned services in a number of the outport communities. The above-mentioned services/projects will be described in more detail in a separate report to be published dealing with independent and student legal aid services.

NORTHWEST TERRITORIES
TERRITORIAL LEGAL AID PLAN

History:

Until 1971, the Department of Justice administered a system of criminal legal aid in the Northwest Territories. The system was restricted to criminal cases and lawyers were paid \$75 a day for all criminal cases except those involving murder where the fee was \$150 a day.

On August 17, 1971, the Government of the Northwest Territories and the Government of Canada, through the Department of Justice, concluded an agreement for the provision of legal aid in both civil and criminal matters.

Plan, Structure and Operation:

The legal aid program for the Northwest Territories, as formally constituted by the agreement between the Government of Canada and the Government of the Northwest Territories, was administered in 1973-74 by a committee established under the terms of the agreement. The committee has three members: the Chairman, who is the legal advisor to the territorial government; a resident member of the Northwest Territories Bar, nominated by the President of the Northwest Territories Bar Association; and a person designated by the Commissioner of the Territories, who is neither a member of the legal profession nor an employee of either the Government of Canada or the Government of the Northwest Territories. In addition, there is a legal aid clerk who acts as secretary to the committee and carries out the administration of the agreement under the direction and supervision of the Chairman.

The committee is assisted by a group of volunteers located in all the large centres in the Territories. There are a number of these volunteers who are called legal aid representatives. The legal aid representatives are responsible for taking legal aid applications and carrying out other duties in accordance with the policies and guidelines laid down by the committee. The representatives keep in touch with committee members and the R.C.M.P. in relation to problems that arise during interviews.

The committee is responsible for setting up two panels of lawyers. All the resident lawyers of the Territories make up the first panel and a second panel consists of lawyers who are members of the Northwest Territories Bar, whether resident or not. Except as noted below, all legal aid services are provided by persons on the first panel. All lawyers in the Northwest Territories live in Yellowknife with the exception of three who live in Fort Smith, Hay River and Inuvik. The committee has laid down a policy whereby the bulk of the legal work arising in those centres that have resident lawyers is handled by those lawyers. In the rest of the Territories, the legal work is performed by lawyers from Yellowknife accompanying the judge or magistrate on circuit. In Yellowknife a system has been devised whereby a duty lawyer is designated to serve for one week at a time taking legal cases in courts held in Yellowknife. Lawyers that travel on circuit are appointed from among the Yellowknife lawyers on a rotational basis.

The legal aid agreement is designed to allow the applicant to have a choice of counsel in cases where he is accused of an offence under Section 27 of the Criminal Code which carries a maximum sentence of life imprisonment or death. His choice of counsel may be made from either panel of lawyers.

Coverage:

(a) Criminal Law:

Under the agreement, legal aid in criminal cases is provided in the following matters:

- (1) an offence under a Statute of Parliament which includes the Criminal Code and is to be proceeded with by indictment;
- (2) an offence under a federal statute or regulation or under a Territorial ordinance or regulation, where the Crown proceeds by way of summary conviction and the accused is subject to a sentence of imprisonment or to a penalty that, in the committee's opinion, will interfere substantially with his livelihood;
- (3) proceedings under the Juvenile Delinquents Act;

- (4) in any other case where, in the opinion of the court or the committee, the accused is not capable of making an informed decision as to his proper course of action, or where he may be subject to a jail term or a sentence which would affect his livelihood; and
- (5) in appeals taken by the Crown, or where counsel advises that an appeal by the accused has merit and the committee agrees, or where the appeal court requests counsel for an accused.

(b) Civil Matters:

Under the agreement, legal aid is available in certain classes of civil matters, where the lawyer certifies that the client has a reasonable case and the committee agrees. Certain matters are specifically excluded:

- (1) defamation;
- (2) estates;
- (3) incorporation of companies or societies or the formation or dissolution of partnerships;
- (4) real property transfers;
- (5) breach of promise of marriage;
- (6) loss of service of a female in consequence of rape or seduction;
- (7) alienation of affections or criminal conversation;
- (8) realtor or representative actions;
- (9) arbitrations or conciliations;
- (10) proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty, in whole or in part, may be payable to the person instituting the proceeding, or
- (11) proceedings relating to any election.

Eligibility:

The agreement provides that legal aid in both criminal and civil matters shall be made available to every person in the Territories and to every person ordinarily resident in the Territories who, in the opinion of the committee, cannot afford to retain his own lawyer without depriving himself or his dependants of reasonable necessities or without sacrificing modest capital assets. In determining whether a person can afford to retain his own lawyer, the committee has regard to the financial status of that person, the financial status of the members of his family and any other matter that the committee considers relevant. As a matter of practice, the committee only looks at the present financial circumstances of the application and does not take into account future earnings.

Tariffs:

Fees allowed in criminal cases are set under the agreement and are \$30 per hour court, \$20 per hour for necessary preparation, and \$15 per hour when the lawyer is away from the office on circuit up to a maximum of 10 hours per day plus reasonable travelling expenses.

Under the agreement, fees for legal aid in civil cases are set at an amount equal to 75% of the fees that would be taxed or that are taxed by the court in connection with that matter on a solicitor-client basis. If any question arises as to the fee that should be allowed in any case or class of case, the Commissioner is empowered to determine the question after consultation with a judge of the territorial court. Reasonable disbursements are allowed and reasonable travelling and living expenses are also allowed provided they do not exceed the territorial government travel regulations.

Financial:

The legal aid plan as set out in the agreement of August 17, 1971 is supported financially by the Government of Canada and the Government of the Northwest Territories on an equal basis, with a stated maximum governing the federal contribution.

In its first claim for the period August 18, 1971 to March 31, 1972, the Government of the Northwest Territories indicated a total expenditure on legal aid of \$43,311.48. The federal contribution amounted to \$27,638.24. In its second claim, for the period April 1, 1972 to March 31, 1973 the Government of the Northwest Territories indicated a net cost after recoveries of \$82,265.64.

At present, the Government of the Northwest Territories is spending approximately \$125,000 per year on legal aid.

Costs recovered in any action are repayable by the applicant to the Commissioner. Where property is recovered in the action, an amount equivalent to the fees and disbursements paid to the legal aid counsel who acted for that person is due and payable to the Commissioner. Finally, where a legal aid applicant is, in the opinion of the committee, able to contribute towards the cost of employing legal aid counsel, he will be required to pay such amount as the committee considers appropriate in the circumstances.

YUKON TERRITORY
TERRITORIAL LEGAL AID PLAN

History:

The question of a comprehensive legal aid plan for the Yukon Territory has been under consideration by the federal Department of Justice and the Territorial Government since the mid-1960's.

Until 1971, the Department of Justice administered the system of legal aid which is still operational in the Territory today. 1969 saw the beginnings of a transfer of responsibilities relating to the administration of justice in the Territory from the Department of Justice to the Territorial Government. The responsibilities transferred included the administration of the established legal aid program. Legislation to secure this major change in administrative responsibility was passed and the transfer took place in March-April 1971.

In 1969, the Department of Justice commenced a further study of the criminal legal aid program and needs in this area in both the Northwest Territories and the Yukon. While the basic program in the Yukon was reported to be operating satisfactorily, recommendations were made in connection with providing more lawyers on a more regular basis to outlying areas, and in connection with the tariff of fees regulating payment to lawyers participating in the program.

Later reports examining the same questions in the northern context considered the possibility of introducing a public defender system but rejected this in favour of the delivery system eventually introduced in the Northwest Territories. Prior to those reports, Mr. Justice Morrow, after conducting an enquiry into the administration of justice in Hay River, N.W.T., recommended that a new legal aid system be implemented for the North but that it should not be based on the public defender type of delivery system.

The Department of Justice finally agreed to a proposal which would see a cost-shared comprehensive legal aid program encompassing both civil and criminal legal aid with services to be delivered by members of the Territorial Bar on a fee-for-service basis. A program of this type was

implemented in the Northwest Territories in August 1971 under an agreement between the Government of the Northwest Territories and the Government of Canada through the Department of Justice. The Yukon Government indicated acceptance of such a program in principle, providing that adjustments were made in the cost-sharing formula contained in the agreement concluded with the N.W.T. government. To date, no agreement has been concluded with the Government of the Yukon Territory and the Government of Canada, although in June 1974, the Territorial Council indicated by resolution that it supported the introduction of a comprehensive plan for the Territory similar to that in operation in the N.W.T. and recommended that negotiations be commenced for the purpose of concluding the necessary agreement with the Government of Canada.

Present Legal Aid Plan:

There is no civil legal aid plan in operation in the Yukon Territory, although the Government will provide representation for deserted wives and/or children under the Maintenance Ordinance and the Child Welfare Ordinance and reciprocal Territorial/Provincial statutes. The official legal aid plan is restricted to criminal cases and is administered by the Yukon Territorial Government. The plan operates on a tariff for lawyers of \$75 a day for all criminal cases except murder where the fee is \$150 a day. No administrative costs are charged to the plan and costs incurred are thus restricted to payments to lawyers on a fee-for-service basis.

The total cost of the Yukon legal aid plan for 1973-74 was \$18,000.

Yukon Territorial Government Legal Aid Proposals:

In 1972 and 1973, proposals within the Territorial Government were made recommending a free comprehensive legal aid plan covering both civil and criminal matters. The first proposal related directly to the delivery of legal aid and envisaged the appointment of a legal aid director who would be responsible for administering the plan and who would occasionally provide some services in uncontested matters and act, from time to time, as duty counsel. The balance of services would be provided by private lawyers on a fee-for-service basis.

The second proposal visualized administration of a scheme by an ombudsman if other proposals in that regard were accepted by the Government. Both proposals avoided commitment to a full "public defender" system.

In early 1974, a motion recommending the establishment of a comprehensive civil and criminal legal aid system was adopted by the Territorial Council and the Commissioner has indicated his hope that the scheme as contemplated would be operational by April 1, 1975. The scheme is to be cost-shared by the federal and territorial governments. The scheme when adopted will in all likelihood be similar to that already operating in the Northwest Territories.

The Government announced in the Territorial Council in late June 1974 that it would examine the possibility of putting into immediate effect a scheme to finance legal advice, in appropriate cases, for residential tenants who are involved in legal difficulties with their landlords. If this scheme is introduced, it will result in a staged introduction of the civil legal aid ahead of the proposed starting date of April 1, 1975.

APPENDIX "A"

DIRECTORY

PROVINCIAL AND TERRITORIAL LEGAL AID DIRECTORS AND MAIN OFFICES

BRITISH COLUMBIA: Frank Maczko, Esq., (604) 687-1831
Director, (On leave of absence 1973-74)
Legal Aid Society of British Columbia,
2nd Floor, 195 Alexander Street,
Vancouver, B.C. V6A 1N3

Bryan F. Ralph, (604) 687-1831
Assistant Director.

ALBERTA: G. Patrick Sommervill, Esq., (402) 423-3311
Director,
Legal Aid Society of Alberta,
308 McLeod Building,
Edmonton, Alberta T5J 0P1

Donald G. Fraser, Esq., (402) 423-3311
Assistant Director.

Deputy Director,
Alberta Legal Aid,
Court House,
Calgary, Alberta T2P 1T5

SASKATCHEWAN: Linton J. Smith, Esq., (306) 652-6095
Provincial Director,
236 - 20th Street West,
Saskatoon, Saskatchewan, S7M 4A5

MANITOBA: Ronald J. Meyers, Esq., Q.C., (204) 947-6501
Executive Director,
Legal Aid Manitoba,
The Legal Aid Services Society of Manitoba,
325 Portage Avenue,
Winnipeg, Manitoba R3B 2B9

ONTARIO: Andrew M. Lawson, Esq., Q.C., (416) 361-0766
Provincial Director,
Ontario Legal Aid,
Suite 1000, 145 King Street West,
Toronto, Ontario M5H 3L7

John B. Allen, Esq.,
Assistant Director.

QUEBEC: The Honourable Judge Robert Sauvé, (416) 873-3562
Président,
Commission des Services Juridiques,
1170 Square Beaver Hall,
Bureau 300,
Montréal 111,
Quebec.

Andre St. Cyr, (416) 873-3562
Secretary.

NOVA SCOTIA: Howard E. Crosby, Esq., Q.C., (902) 425-3160
Executive Director,
Nova Scotia Legal Aid,
2111 Gottingen Street,
Halifax, Nova Scotia B3J 2X1

NEW BRUNSWICK: Edward F. McGinley, Esq., (506) 455-9976
Provincial Director,
Legal Aid New Brunswick,
P.O. Box 1144,
Fredericton, N.B. E3B 5C2

PRINCE EDWARD ISLAND: Paul J.D. Mullin, Esq., (902) 892-6213
Provincial Public Defender,
Law Courts Building,
P.O. Box 205,
Charlottetown, P.E.I.

Kent Brown, Esq., (902) 436-5050
Provincial Public Defender,
Summerside, P.E.I.

NEWFOUNDLAND: Paul R. Stapleton, Esq., (709) 726-4338
Administrator, 4347
Newfoundland - Legal Aid Plan, 4348
The Legal Aid Committee of the Law
Society of Newfoundland,
287 Duckworth Street,
St. John's, Newfoundland A1C 1G9

NORTHWEST TERRITORIES: S.M. Hodgson, Esq., (403) 873-7112
Commissioner of the Northwest Territories,
Yellowknife, N.W.T.,
X0E 1H0

John H. Parker, Esq.,
Deputy Commissioner.

D.W. Trent, (403) 873-7125
Chairman,
Legal Aid Committee.

YUKON TERRITORY:

James Smith, Esq., (403) 667-7811
Commissioner of the Yukon Territory,
Box 2703,
Whitehorse, Yukon.

P. O'Donoghue, Esq., Q.C., (403) 873-7125
Director, Legal Affairs,
Government of the Yukon Territory
Whitehorse, Yukon.

